

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jeffery A. Johnson,

Plaintiff,

v.

Case No. 2:13-cv-25

**Muskingum Co. Sheriff's
Dept., et al.,**

Judge Michael H. Watson

Defendants.

ORDER

Plaintiff brings this prisoner civil rights action under 42 U.S.C. § 1983 and state law. Plaintiff alleges that he choked on an apple stem when he was eating apple crisp while he was detained at the Muskingum County jail. He avers that while he was choking on the stem, he stumbled, and his head struck the jail cell's bars, causing him to lose consciousness. Plaintiff asserts that when he regained consciousness, he experienced a great deal of pain and requested medical treatment, but his request was denied.

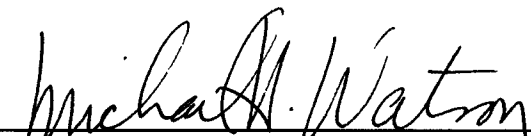
On December 11, 2013, the U.S. Magistrate Judge issued an Order and Report and Recommendation ("R&R"), ECF No. 60, in which she recommended that Defendants' motions to dismiss for lack of prosecution, ECF. Nos. 46 and 47, be denied. *Id.* at 9, PAGEID # 298. She also recommended that Plaintiff's motion not to dismiss for lack of prosecution and for referral to a lawyer, ECF. No. 48, be granted to the extent that it asks the Court not to dismiss his claims for

failure to prosecute but denied without prejudice to the extent Plaintiff requests appointment of counsel. *Id.*

The Magistrate Judge expressly warned the parties of the consequences of failing timely to object to the Report and Recommendation. No objections have been filed to date, and the deadline to file objections has now expired. The Court **ADOPTS** the Magistrate Judge's December 11, 2013 R&R, ECF No. 60. Accordingly, the Court **DENIES** Defendants' motions to dismiss for lack of prosecution, ECF Nos. 46 and 47, **GRANTS** Plaintiff's motion not to dismiss for lack of prosecution and for referral to a lawyer, ECF No. 48 to the extent the motion requests that Plaintiff's claims not be dismissed for lack of prosecution, but **DENIES** that motion **WITHOUT PREJUDICE** to the extent Plaintiff seeks appointment of counsel.

The Clerk shall remove ECF Nos. 46, 47, 48, and 60 from the Civil Justice Reform Act motions report.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT